(27)

No. 77

In the Supreme Court of the United States

OCTOBER TERM, 1944

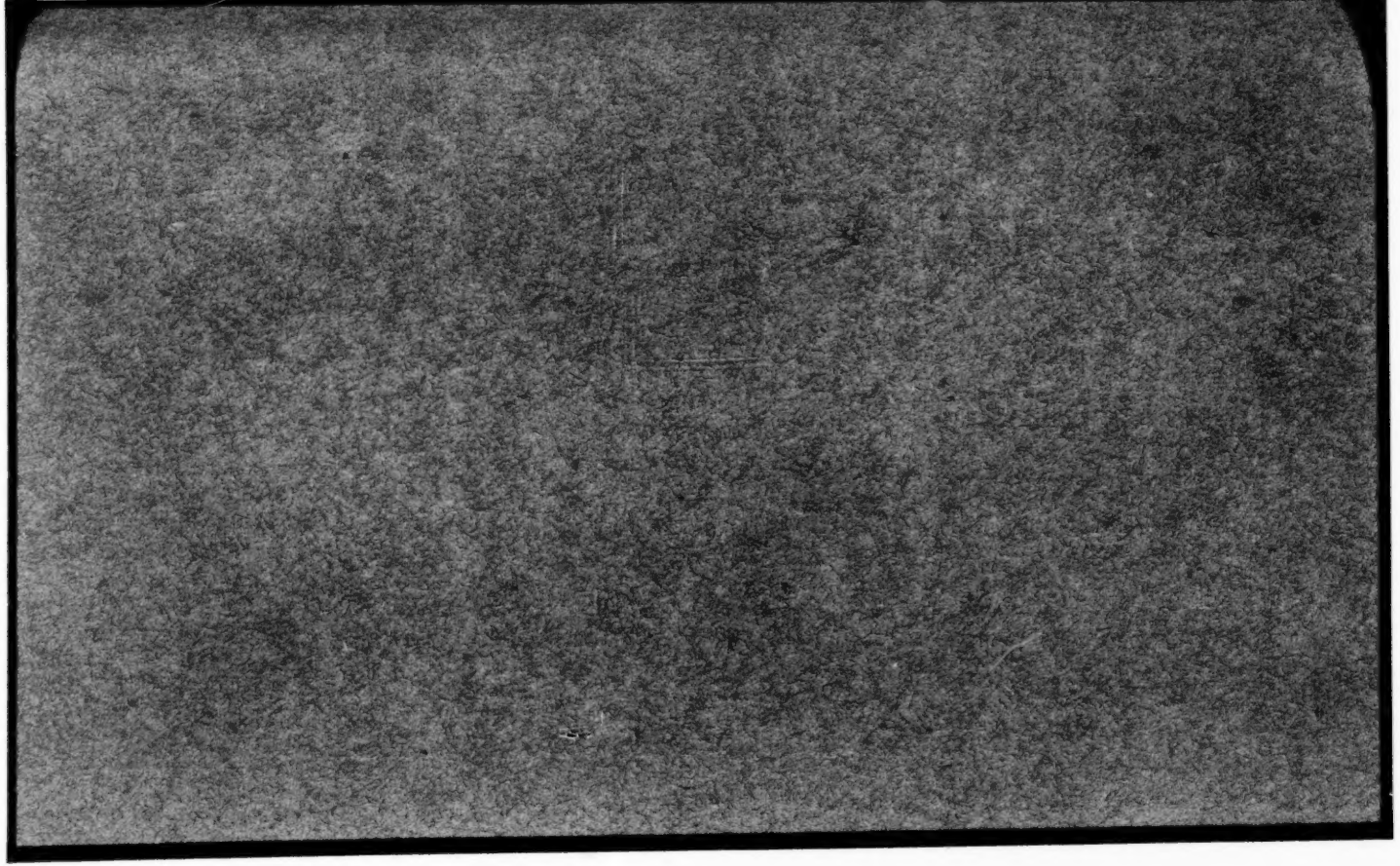
CHARLES S. LOBINGIER, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION



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OPINION BELOW

The opinion of the Court of Claims (R. 5–12) is reported in 100 C. Cls. 448.

JURISDICTION

The judgment of the Court of Claims was entered on December 6, 1943 (R. 12). Petitioner's motion for a new trial was overruled on February 7, 1944 (R. 12). The petition for a writ of certiorari was filed on May 6, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 12, 1939, 28 U. S. C. 288 (b).

QUESTION PRESENTED

Whether under the Act of October 10, 1940, and regulations issued thereunder, a federal employee whose official station is transferred from Washington, D. C., to Philadelphia, Pa., is entitled to reimbursement for the expenses of packing, crating, and drayage of his household goods and personal effects to a place of storage in Washington, D. C., before such goods and effects are transported to the new official station.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the Appendix, pp. 12–21, *infra*.

STATEMENT

The facts as alleged in the petition in the Court of Claims (R. 1–3), and as admitted by the demurrer of the United States (R. 5), are as follows:

Petitioner, an officer of the Securities and Exchange Commission, was officially stationed at the main office of the Commission in Washington, D. C., until March 1942, when that office was transferred to Philadelphia, Pa., in the process of partially decentralizing the Federal Government. On March 5, 1942, petitioner was directed by the Commission to proceed from his official station in Washington to Philadelphia, on or about March 16, 1942, to be permanently stationed there. The

Act of October 10, 1940 (see Appendix, pp. 12–13, *infra*) provides that:

> expenses which now or hereafter may be authorized by law to be paid from Government funds for the packing, crating, drayage, and transportation of household goods and personal effects of civilian officers and employees of any of the executive departments or establishments of the United States when transferred from one official station to another for permanent duty shall hereafter be allowed and paid, when specifically authorized or approved by the head of the department or establishment concerned, under such rules and regulations as may be prescribed by the President * * *.

With the approval of the Chief of the Commission's Budget and Accounting Section, petitioner employed the Merchants' Transfer and Storage Company, whose bid of $127.50 was the lowest, to pack, crate, and dray his household goods and personal effects to the company's storage house in Washington, D. C., preparatory to their transportation to Philadelphia after petitioner should secure a suitable apartment there. On September 9, 1942, in accordance with Section 12 of Executive Order No. 8588, as amended by Executive Order No. 9122 (see Appendix, pp. 19–20, *infra*), he secured from the Chairman of the Commission an extension to March 16, 1944, for the transportation of his household goods and

personal effects to Philadelphia.[1] He tried to find an apartment in Philadelphia within his means, to house his goods and effects, but was unable to do so and did not transport his goods and effects to Philadelphia.[2] Shortly after reaching Philadelphia, petitioner presented the storage company's bill for $127.50 to the Public Buildings Administration of the Federal Works Agency.[3] The Federal Works Agency refused payment but

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[1] The regulations prescribed by the President under authority of the Act of October 10, 1940, required shipments to begin within six months of the effective date of transfer but permitted extensions of time by the head of the department or agency for not more than two years from the date of transfer (Section 12 of Executive Order No. 8588, effective October 10, 1940, amended by Executive Order No. 9122 of April 6, 1942; Appendix, pp. 19–20, *infra*).

[2] It does not appear, and petitioner has declined to inform us, whether he had shipped his goods and effects to Philadelphia before March 16, 1944, the last day on which he could so transport them at Government expense, or indeed whether he has shipped them at all. See note 1, *supra*.

[3] The Public Buildings Administration conducted the decentralization and transfer program by virtue of authority contained in certain letters of the President to the Secretary of the Treasury, allocating funds for the transfer of household goods and personal effects of transferred employees, "as provided by the Act of October 10, 1940, and regulations promulgated thereunder." Letters of Allocation to Secretary of Treasury, No. 42–48, December 23, 1941; No. 42–69, February 6, 1942; and No. 42/3–8, April 18, 1942; see 22 Comp. Gen. 478, 481. These funds were derived from the Independent Offices Appropriation Act of 1942 (Act of April 5, 1941, c. 40, 55 Stat. 92, 94) and the Third Supplemental National Defense Appropriation Act of 1942 (Act of December 17, 1941, c. 591, 55 Stat. 810, 818), establishing an Emergency Fund to be expended under direction of the President.

referred the matter to the Comptroller General of the United States. The latter sustained the refusal, ruling that an employee is not entitled to reimbursement for packing, crating, and drayage expenses incurred as a result of a decentralization order if the goods are never actually transported to the new official station, nor prior to such transportation (22 Comp. Gen. 478, November 17, 1942). Meanwhile, in order to prevent his goods and effects from being sold by the storage company to meet the unpaid charges, petitioner paid the bill of $127.50, and on February 19, 1943, instituted suit for that amount in the Court of Claims. The United States demurred to the petition (R. 5). The Court of Claims sustained the demurrer and dismissed the petition (R. 12).

ARGUMENT

The Court of Claims properly held that the Act of October 10, 1940, does not entitle petitioner to reimbursement for the expense of packing, crating, or drayage of his household goods and personal effects before they are actually transported to the new official station (R. 5–9).

1. The Act and its legislative history plainly disclose that it was designed to reimburse employees for the *transportation* of their household goods and personal effects to the new official station, and that the other items of expense were to be allowable only as costs incidental to such trans-

portation. This appears from the title of the Act ("To provide for uniformity of allowances for the *transportation* of household goods," etc.) and from its last proviso ("nothing herein shall affect the allowance and payment of expenses for, *or incident to,* the transportation of effects of officers and employees of the Foreign Service"). See Appendix, p. 12, *infra.*

Both the Senate and House Reports on the bill (S. Rep. 1591, p. 1; H. Rep. 1947, p. 1) set forth the recommendation of the Comptroller General "that legislation be enacted to establish uniformity of allowances for the *transportation* of household goods and personal effects of civilian officers and employees when transferred from one official station to another for permanent duty."[4] The regulations promulgated by the President less than a month after adoption of the Act (Executive Order No. 8588, issued November 7, 1940) are identified as "Regulations Governing the Payment of Expenses of *Transportation* of Household Goods and Personal Effects" of federal employees, and the reference in those regulations to expenses of packing, crating, and drayage suggests that they will

[4] Nothing in these reports or any other record of the course of the bill through Congress intimates that the Act was intended to "set aside the Comptroller General's narrow rulings and establish a more liberal policy," as the petition for certiorari suggests (pp. 3–4).

be allowed only as incidental to actual transfer.[5] There is nothing in the Act or its background to indicate, and petitioner does not contend, that Congress intended to reimburse transferred employees for the expenses of storing furniture which may never be moved to the new official location; and the expenses which petitioner seeks to recover here are related to such storage, rather than to transportation.

It is significant that of almost 17,000 employees transferred in the process of decentralization, petitioner is the only one who has made a claim for expenses of packing, crating or drayage prior to actual transportation.[6] His claim was denied by the Public Buildings Administration and by the Comptroller General. 22 Comp. Gen. 478. This construction of the Act by those entrusted with its administration, including the official (the Comptroller General) at whose suggestion the statute was enacted (see p. 6, *supra*), cannot be

[5] "Sec. 3. *Allowances for Packing, Crating, Unpacking, and Uncrating.*—The actual costs of packing, crating, unpacking, and uncrating shall be allowed: * * *"

"Sec. 4. *Allowances for Drayage.*—The actual costs of drayage to and from the common carrier shall be allowed: * * *"

"Sec. 15. *Preparation of Vouchers.* * * * b. *Itemization of Charges:* Where services rendered cover, *in addition to transportation*, such other services as packing, crating, drayage, unpacking, and uncrating, the total charge for the services shall be itemized * * *." [Italics supplied.] See Appendix, pp. 15, 20, *infra*.

[6] Source: Mr. Walter A. Clark. See note 9, p. 10, *infra*.

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ignored as guides to the meaning of the Act. *Adams* v. *United States*, 319 U. S. 312, 314–15; *United States* v. *American Trucking Associations*, 310 U. S. 534, 549; *Hassett* v. *Welch*, 303 U. S. 303, 310.

The construction urged by petitioner—reimbursement of "pre-transportation" expenses when they are incurred, whether or not the goods are actually shipped to the new station—would create "confusion in payment and audit" contrary to the objectives of the Act. (See pp. 9–10, *infra*.) Section 5 of the President's regulations, as amended, requires that the "shipment shall be by the most economical means, taking into consideration the cost of packing, crating, drayage, unpacking, and uncrating," and as the Comptroller General pointed out (22 Comp. Gen. 478, 483), "unless and until the household goods are ready for shipment to the new station there can be no proper comparison of the relative cost of transportation by water, rail, or van to determine the most economical means or whether packing and crating will be necessary in any event."[7] Under the petitioner's interpretation of the Act, an employee could have his furniture crated and drayed at Government expense to a warehouse, even though the most economical means of shipment to the new station would be to place the furniture directly into a moving van, for door to door delivery,

[7] Packing and crating are usually not required when transportation is by motor van. 22 Comp. Gen. 478, 483.

without any crating or drayage. As the court below properly concluded, this would be "nothing but waste" which the statute does not "compel the administrative officers of the Government to reimburse from public funds" (R. 9).

2. Petitioner contends here, as he did below, that, in order to be entitled to reimbursement for the expenses of packing, crating, and draying his goods and effects, he need only secure authorization or approval of such expenses from the head of the establishment in which he is employed. There is nothing in the pleadings or record to indicate that such authorization or approval was had.[8] In any event petitioner's contention was properly rejected by the court below. The provision for approval by the head of the department or establishment is a condition precedent to any right to reimbursement, but is clearly not a grant of power to the head of each department and establishment to decide what expenses of this kind are to be borne by the Government. This appears from the legislative history of the statute,

[8] Contrary to his statement in the petition for certiorari (p. 7), the letter of September 9, 1942, (R. 4–5) from the Chairman of the Commission to the Public Buildings Administration merely approved an extension of time for the shipment of the household goods of petitioner and other employees of the Commission, without mentioning or referring to packing, crating, and drayage expenses. The Chief of the Commission's Budget and Accounting Section is alleged to have approved these expenses, but there is no allegation in the original petition that he had authority to act for the Commission in such cases.

disclosing that the chief objective of the Act was to achieve "reasonable uniformity" in allowances and "to obviate the inequalities and confusion in payment and audit" by substituting a single statute and set of regulations for the various legislative provisions applicable to separate agencies and the widely varying regulations which each agency had adopted thereunder. See S. Rep. 1591 (76th Cong., 3d Sess.), pp. 3–4; H. Rep. 1947 (76th Cong., 3d Sess.), p. 3. For that reason the rule-making power under the statute is expressly vested not in the several department heads but in the President. See Appendix, p. 12, *infra*.

CONCLUSION

The judgment below represents a reasonable construction of the statute involved, and does not foreclose a claim by petitioner for the expenses in question if he actually shipped the goods and effects to Philadelphia within the allotted time. The question presented is one of limited application and does not merit review by this Court.[9] It is respectfully submitted that the

[9] The process of decentralization has been virtually completed. It may be noted that of the almost 500 employees of the Securities and Exchange Commission transferred to Philadelphia, petitioner, so far as we know, is the only one to have made a claim under the 1940 Act based upon the difficulty of finding a suitable habitation there. Source: Mr. Walton C. Clark, Engineer Assistant to Commissioner of Public Buildings (serving as Assistant Manager to the Office of Decentralization Service at the time the decentralization program was carried out), Public Buildings Administration, Federal Works Agency.

petition for a writ of certiorari should be denied.

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JUNE 1944.